OUTER HOUSE, COURT OF SESSION

[2017] CSOH 136

P430/17

OPINION OF LORD BURNS

In the Petition of

MUHAMMAD USMAN

Petitioner

for

Judicial Review of a decision by the Secretary of State for the Home Department

Petitioner: K Forrest; Drummond Miller LLP
Respondent: Maciver; Office of the Advocate General

24 October 2017

[1] The petitioner seeks judicial review of the decision of the respondent dated 10 May 2017 to curtail the petitioner's leave to remain in the United Kingdom on the basis that he had breached section 10(1)(a) of the Immigration Act 1971 with an offence under section 24(1)(b)(ii) thereof because he had been working contrary to the conditions of his leave to remain.

[2] The petitioner entered the United Kingdom on a student visa on 9 October 2016 with leave to remain until 16 August 2017. The visa allowed him to work up to 10 hours

per week. He studied at Glasgow Caledonian University. He also undertook a part-time job as a waiter in a restaurant in Coatbridge.

[3] On 25 November 2016 immigration officers employed by the respondent visited that restaurant. They found the petitioner working and, on enquiry of the manager of the restaurant, were told that petitioner worked approximately 25 to 30 hours per week. A colleague, Mr Aria, was also interviewed and he confirmed that the petitioner had worked there for the past three weeks and worked on Thursday, Friday, Saturday and Sunday. The petitioner himself was questioned and stated there that he had worked for two weeks for 10 hours only on Fridays and Saturdays.

[4] In the light of the information obtained, it was decided to detain the petitioner on the basis that he was working more than his permitted 10 hours per week. On or about 25 November 2016 he was served with a notice curtailing with immediate effect his leave to remain in the United Kingdom. That decision purported to be on the basis that he had used deception in seeking leave to remain or a variation of leave to remain under paragraph 323(ia) of the Immigration Rules.

[5] The petitioner raised a petition seeking review of that decision on the basis that it was wrongly based on the allegation of deception. On 20 February 2017 the respondent withdrew that decision accepting apparently that it was erroneous. The petition was withdrawn. However, the respondent then issued the further decision of now complained of dated 10 May 2017. This is based upon the contention that the petitioner was in breach of Rule 322(3) since he had failed to comply with the condition attached to the grant of leave to remain in respect of hours worked.

[6] It is a matter of agreement that, following the visit by the immigration officers to the restaurant on 25 November, the manager of the restaurant attended at the offices of the

respondent in Glasgow on 28 November 2016 and was interviewed by a Home Office official. He stated that the petitioner had worked at the restaurant for three weeks and worked Friday and Saturday five hours per day. He therefore retracted his statement given on 25 November. It was claimed that he had become confused as to which Muhammad he was being asked about, there being a number of workers with that name in his restaurant.

[7] As a result of the petitioner's detention, his solicitors asked the Secretary of State, in letters dated 1 and 2 of December 2016, to reconsider their decision to detain him bringing to their attention the fact that the manager had apparently changed his position in terms of the interview he had given as narrated above. The respondent responded by letters dated 7 and 14 December 2016. In the letter of 7 December, the information contained in the solicitor's letter to the effect that the manager had signed a statement to the effect that the petitioner had not worked in excess of his permitted 10 hours per week and had given that statement on 28 November to that effect is reiterated. No comment or assessment of that information is advanced. It then proceeds to narrate that the manager was interviewed at the premises on 25 November and gave contradictory information to the effect that the petitioner worked for 20 hours per week. Reference is also made to the information given by Mr Aria to the effect that the petitioner worked in the restaurant on Thursdays, Fridays, Saturdays and Sundays. It then proceeds to state that "it was deemed that he (the petitioner) had worked in excess of his permitted 10 hours per week."

[8] In the letter of 14 December reference is again made to the claim by the petitioner's solicitors that the manager had admitted that he was mistaken in informing immigration officers that the petitioner worked between 25 and 30 hours per week in paragraph 3. It is stated:

> "However, you have provided no written evidence from either the Home Office in Glasgow (*sic*) to confirm that the restaurant manager visited them and provided the information you claim"

The decision to detain the petitioner was accordingly maintained.

[9] The petition avers that the respondent has erred in her approach to the decision of 10 May 2017. It is first said that the decision is a perverse as one based on error in fact. In paragraph 6.1 of the petition it is stated that the respondent had failed to acknowledge or refer in anyway in the decision letter of 10 May 2017 to the subsequent explanations given by the manager. In doing so she had acted unreasonably and in a way that no reasonable decision maker would have acted. It is argued secondly that she has failed to exercise a proper discretion under the Immigration Rules quoted.

[10] In advancing his arguments on behalf of the petitioner, Mr Forrest relied on both those grounds he maintained the respondent's decision was both perverse and that the respondent had failed to exercise a reasonable discretion in the matter. Mr Maciver for the respondent maintained that the decision was a reasonable one and could not be classified as perverse. The respondent had regard to the evidence as set out in the letter of 7 December. There was evidence from the manager on 25 November that the petitioner worked more than his permitted 10 hours per week and that was supported by the evidence of Mr Aria. The respondent was entitled in those circumstances to prefer that evidence to the subsequent retraction of the manager and the statement of a petitioner that he only worked for 10 hours per week. It was clear from the terms of the decision letter of the 10 May that the respondent was aware that the matter was a discretionary one and that a proper exercise of discretion had been performed.

[11] The decision letter of 10 May 2017 merely states that the petitioner has worked in breach of his conditions and no further detail is given. Mr Maciver submitted that the

evidence from which the decision was based is set out in the letter of 7 December. He argued that the decision was one which was open to the respondent to take upon the evidence available. He referred to *Wordie Property Company Limited* v *The Secretary of State for Scotland* 1984 SLT 345 at 348 where Lord President Emslie stated that in order to comply with the statutory duty imposed upon the Secretary of State in that case he required to give proper and adequate reasons for his decision which deal with the substantial questions in issue in an intelligible way. The informed reader had to be left in no real or substantial doubt as to what the reasons for the decision were and what were the material considerations taken into account in reaching it.

[12] I have come to the view that the decision complained of falls short of the requirements set out by the Lord President in that case. There is no explanation given in the decision itself as to what evidence was taken account of, far less why part of that evidence was rejected and another part accepted. In circumstances where the manager had retracted his original statement, the petitioner is left with no explanation as to why it was that the second statement was rejected. While it may be that it is, generally speaking , unnecessary to spell out the reasoning in a decision to curtail leave to remain, as Mr Maciver argued, there is a further element which is of importance in this case. In the subsequent letter of 14 December 2016, the respondent appears to be unaware of any written evidence confirming that the manager had visited the respondent's offices in Glasgow and provided information which contradicted the original information he had given on 25 November. However, 6/4 of process is the transcript of that interview of 28 November taken by a Home Office official.

[13] It was not the subject of dispute that this information had been given to the respondent on that date. Accordingly, the Secretary of State's officials were apparently

labouring under a misapprehension on 14 December 2016 which, from the information before me, was never in any way corrected by the time that the decision of 10 May 2017 was made.

[14] I am therefore unable to conclude that the respondent's decision of 10 May was a reasonable one based upon all material considerations that ought to have been taken into account. There is no indication in the papers advanced before me or in the submissions advanced on behalf of the respondent that the terms of the manager's statement of the 28 November was ever properly taken into account. That circumstance, together with the lack of any reasoning in the decision to curtail of 10 May leads me to the conclusion that the Secretary of State's decision can be categorised as perverse since it appears to have wholly ignored, and thus failed to deal with, the fact of the manager's statement of 28 November.

[15] For these reasons I will reduce the decision of 10 May 2017. I will make no order meantime as to expenses.